In other words, respondent seeks to leave the impression that the subsidy program was keyed alone to meat prices rather than to livestock production and sale, which was the fact.

10. Respondent states (Ans., p. 6) that Announcement No. 1 "in effect" declared that no subsidies would be paid "with respect to meat held in inventory" on October 14, 1946. There was no subsidy as to meat. The Announcement was intended to effect a forfeiture of subsidies payable on slaughter operations had prior to October 15, 1946 as to which resulting processed meats remained on hand. Respondent does not mention that its regulation expressly provided that termination would not affect payment of subsidy claims "on account of livestock slaughtered on or before the date of termination." (Pet., p. 30.)

11. Respondent states (Ans., p. 6) that petitioner repeatedly demanded payment "of subsidies for its October 14, 1947 inventory." This is a misstatement. No such demand was ever made. What petitioner did demand was payment of the unpaid balance of its claims on slaughter operations had prior to October 15, 1946, as expressly provided for and authorized in the directives and respondent's regulation. In compliance with the directives and the regulation petitioner had theretofore passed on the benefit of the subsidy to the livestock producer as to the livestock involved in the slaughter operations in question.[3]

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[3] In a footnote (Ans., p. 8) respondent implies there was some irregularity in the trial proceedings in the District Court, and that the question was raised in the Court of Appeals. Neither statement is correct. The point, if any, was not before the Court of Appeals, as respondent erroneously suggests, because respondent stated express-

## III.

THE AUTHORITIES RELIED ON BY RESPONDENT NOT ONLY FAIL TO SUPPORT ITS CONTENTIONS AS TO JURISDICTION, BUT TO THE EXTENT APPLICABLE, SUPPORT PETITIONER'S CONTENTIONS.

Respondent, by a supposedly impressive string of citation, would have this Court believe that the decision by the Court of Appeals is consistent with and is sustained by decisions of Courts of Appeal for the First, Second, and Tenth Circuits, and of the Emergency Court of Appeals. (Br., 16-17; f. n. 10 at page 17.) As appears from the discussion of those cases in our petition (pp. 19, 20, 25, 28, 30-32) they not only do not so hold, but certain of them fully support, in principle, the position advanced by petitioner.

For example, in *Samett* v. *RFC,* 165 F. 2d 605 (C.A. 10, 1947), unlike the case at bar, the subsidy applicant directly attacked Revised Livestock Slaughter Payments Regulation No. 3. The Court of Appeals for the Tenth Circuit properly held that Section 2(m) was inapplicable

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[3] (Continued.)
ly in its brief in that Court that it waived and withdrew any claim of error in that regard.

But in any event it was without merit or basis in fact. Counsel for petitioner and respondent submitted the cause to the District Court Judge for decision on the pleadings, briefs, and supplemental facts recited in the briefs to be stipulated by counsel as to which they reported there was no disagreement. When the District Court Judge decided the issues against respondent and in favor of petitioner respondent's counsel retracted their agreement and refused to stipulate. The District Judge thereupon simply referred the matter to a master to take the proofs.

The footnote in respondent's brief is disingenious, to say the least.

since the challenge was directed at the basic regulation rather than at administrative action alleged to be not authorized by it. But, with respect to the application of Section (2(m), the Court said (at page 607):

> "It [Sec. 2(m)] was an independent provision which had application in cases where the plaintiff felt aggrieved at administrative action taken or failure to act under the terms of the Act or under a valid regulation. It conferred jurisdiction upon the district courts of the United States to entertain suits where the administrative action taken, or the failure to act under the Act or under a valid regulation, was challenged as an erroneous determination of fact or law."

*Tambasco* v. *Reconstruction Finance Corporation,* 178 F. 2d 283 (C.A. 2, 1949); *Atlantic Meat Co.* v. *Reconstruction Finance Corp.,* 166 F. 2d (C.A. 1, 1948); and *Illinois Packing Co.* v. *Defense Supplies Corp.,* 57 F. Supp. 8 (N.D. Ill., 1944), aff'd., 156 F. 2d 875 (C.A. 7, 1946), each concerned a direct attack on the basic regulation. *Schluderberg-Kurdle Co.* v. *Reconstruction Finance Corporation,* 169 F. 2d 419 (E.C.A., 1948), did not involve Section 2(m) at all. Furthermore, complainant affirmatively conceded the jurisdiction of the Emergency Court alleging that the "Announcement" was a "regulation or order" and respondent did not contest the allegation. This fact was noted and relied on by the Emergency Court in its opinion. See Pet., 28-29.

The applicable decisions including those primarily relied on by respondent are categorized and fully discussed in the petition. (Pet., 19-21, 24-26.)

## IV.

### PETITIONER IS ENTITLED TO PREVAIL ON THE MERITS.

The merits of petitioner's claims were sustained by the District Court after a careful consideration of the issues, the applicable directives, and the regulations. The Court of Appeals did not reach the merits of the District Court's decision by reason of its erroneous determination of the jurisdictional issue. The reasons leading the District Court to its conclusion on the merits were adverted to and summarized in the petition. (Pet., 13-15; 29-33.) For the reasons there stated, petitioner submits that its arguments on the merits of its claim for relief are well founded.

One further contention of respondent merits our comment. Respondent asserts (Br., 20, f. n. 13) that Section 6 (a) (4) of the Price Control Extension Act of 1946 affords statutory authority for Announcement No. 1. Section 6 (a) (4) provides merely that subsidies shall not be paid on "subsidy operations" occurring after the removal of price ceilings. The "subsidy operations" for which petitioner claimed payment were "operations" which had ended and were concluded prior to the removal of price ceilings on October 15, 1946. Petitioner did not ask for allowance of subsidy claims for slaughter operations which occurred on and after October 15, 1946. Furthermore, the Price Control Extension Act of 1946 specifically directed that subsidies be employed to build up inventory so that supply would equate demand and thus hasten decontrol and the removal of price and related controls. The Act was not designed or intended to penalize those who in conformity with the Act built up inventory to fulfill its stated purposes. Thus, Section 6(a)(4) of the Act in no manner supports respondent's contentions.

Respondent also relies on *Schluderberg-Kurdle Co.* v. *RFC,* 169 F. 2d 419 (E. C. A., 1948). For the many reasons summarized in the petition (Pet., 32), that decision is clearly distinguishable. Furthermore, it is directly contrary in principle to subsequent decisions of the Emergency Court of Appeals. See, *e. g., Gibbs* v. *RFC,* 169 F. 2d 654 (E. C. A., 1948); *Belle City Packing Co.* v. *RFC,* 169 F. 2d 413 (E. C. A., 1948); and *Consolidated Flour Milling Co.* v. *RFC,* 177 F. 2d 206 (E. C. A., 1949).

## CONCLUSION.

For the reasons stated it is respectfully submitted that the case at bar fully merits review by this Court. The petition for writ of certiorari should therefore be granted.

Respectfully submitted,

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